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Supreme Court of the United States

October Term, 1973
No. 73-323

KENNETH HEGYES,
Petitioner,

vs.

SOUTH RIVER RESCUE SQUAD,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
To the United States Court of Appeals
For the Sixth Circuit

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Supreme Court of the United States

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No. _____

KENNETH HEGYES,
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SOUTH RIVER RESCUE SQUAD,
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PETITION FOR A WRIT OF CERTIORARI
To the United States Court of Appeals
For the Sixth Circuit

Petitioner, Kenneth Hegyes, prays that a writ of certiorari issue to review the order of May 22, 1973, in the United States Court of Appeals for the Sixth Circuit affirming the order of the United States District Court for the Northern District of Ohio dismissing petitioner's Complaint.

OPINIONS BELOW

The order of the District Court setting forth its reasons for dismissing petitioner's Complaint is not reported (appendix p. 24).

The order of the Court of Appeals affirming the District Court's order is not reported (appendix p. 21).

JURISDICTION

The order of the Court of Appeals was dated and entered by the Clerk on May 22, 1973. 28 U.S.C. 1254(1) gives this Court jurisdiction to review the order by writ of certiorari.

QUESTIONS PRESENTED

1. Where the basic facts are not in dispute and all relevant matters are matters of record has the Court below erred in affirming an order dismissing petitioner's Complaint. Where neither petitioner nor his attorney of record were notified as to the time and place of a hearing to be had against petitioner, does this lack of notice of record violate the concept of Due Process.

The Court of Appeals for the Sixth Circuit has held this lack of notice after in-personam jurisdiction was obtained did not violate the concept of Due Process. The Sixth Circuit's decision has no support from any reported cases.

The Supreme Court has repeatedly decided that Due Process is necessary at all stages of proceedings and that a lack of this type of notice is unconstitutional.

2. Was petitioner denied a forum in Ohio by the doctrine of Full Faith, and Credit. Was this denial in direct conflict with the Supreme Court decisions, concerning a litigant's rights to have some forum.

STATUTES INVOLVED

Title 28 of United States Code Section 1343 gives any District Court jurisdiction to hear a complaint for deprivation of equal protection of the law.

U.S.C. 28, Section 1343. Civil rights and elective franchise.

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights including the right to vote.

The section of title 42, Section 1985 which has been denied to Hegyes is title 42, Section 1985 (2).

U.S.C. 42, Section 1985. Conspiracy to interfere with civil rights—Preventing officer from performing duties.

* * * * *

(2) * * * *or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws,* or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws; * * *"

U.S.C. 42, Section 1983. Civil action for deprivation of rights.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

STATEMENT

The opportunity to fairly defend one's self in an adversary atmosphere is a right guaranteed by the Constitution and this Court as its guardian and champion has scrupulously and meticulously preserved that right wherever that right has been violated. The case-at-bar presents an obvious deviation from this long-established doctrine by ratifying a procedure that failed in the primary sense to provide the petitioner a forum to fairly and freely defend his interest and adequately protect his property.

Capsulated, the facts are these. December 19, 1964, the petitioner was involved in an automobile accident in Middlesex County, New Jersey. A complaint was filed in Middlesex County Court on October 3, 1965, and on December 16, 1967, petitioner was duly and personally served with summons while in the military service and stationed in Fort Knox, Kentucky. In-personam jurisdiction having been obtained over the petitioner he obtained the services of Robert F. Belovich, who filed in letter form a motion staying proceedings against the petitioner invoking the sanctions of the Soldiers and Sailors Relief Act of 1940, Section 200. Proceedings were stayed against the petitioner while he was under orders to serve in Vietnam. Petitioner was released from military service in March of 1969, and default judgment was rendered against the petitioner on November 12, 1969. Ten other defendants were either dismissed or judgment rendered against them and in favor of respondent before this date. Petitioner was the only defendant who had a default judgment rendered against him. Extreme importance is placed upon the failure of notice to petitioner or his attorney of record

of these default proceedings which were had against petitioner in November of 1969. Additional emphasis is placed upon the failure of the Court in New Jersey to timely inform the petitioner or his attorney of record that judgment was rendered against him and in favor of the respondent. January of 1971, some 14 months later, respondent filed a complaint for enrollment of its foreign judgment against petitioner and in favor of respondent in Shaker Heights Municipal Court. September 3, 1971, judgment was rendered against petitioner and in favor of respondent; this judgment was affirmed on March 30, 1972, by the Court of Appeals for the Eighth Judicial District of Ohio. Whereupon petitioner filed an action in the United States District Court to remove judgment and judgment lien, for declaratory and injunctive relief. This action was dismissed as frivolous and later affirmed by the 6th Circuit Court of Appeals. In affirming the District Court's decision, the Court of Appeals ratified the misconduct of the New Jersey Court which failed to adequately notify either the petitioner or his attorney of record and thereby directly conflicting with the established doctrine of due process.

Respondent employed State action to enforce the collection of its judgment obtained in New Jersey in violation of the Constitution by using the Ohio Judicial System in violation of U.S.C. Title 42, Section 1983.

The action in New Jersey prevented petitioner from a full and fair hearing to champion his cause and be heard in his defense. Nowhere in respondent's argument either orally or by brief or by exhibit does it controvert petitioner's claim of a denial of fair notice. The District Court clearly had jurisdiction to hear evidence and determine if the judgment taken in New Jersey was obtained in violation of the constitution.

REASONS FOR GRANTING THE WRIT

1. This Case Affirms Procedure Which Has Been Determined to Be Unconstitutional by This Court.

The Court has frequently addressed itself to the notion of Due Process.

> "For more than a century the central meaning of procedural due process has been clear: 'Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must be notified.' *Baldwin v. Hale*, 68 U.S. 223. See *Windsor v. McVeigh*, 93 U.S. 274; *Hovey v. Elliott*, 167 U.S. 409; *Grannis v. Ordean*, 234 U.S. 385—It is equally fundamental that the right to notice and an opportunity to be heard 'must be granted at a meaningful time and in a meaningful manner.' *Armstrong v. Manzo*, 380 U.S. 545, 552.
>
> The primary question in the present cases is whether these state statutes are constitutionally defective in failing to provide for hearings 'at a meaningful time.' The Florida replevin process guarantees an opportunity for a hearing after the seizure of goods, and the Pennsylvania process allows a post-seizure hearing if the aggrieved party shoulders the burden of initiating one. But neither the Florida nor Pennsylvania statute provides for notice or an opportunity to be heard *before* the seizure. The issue is whether procedural due process in the context of these cases requires an opportunity for a hearing *before* the State authorizes its agents to seize property in the possession of a person upon the application of another.

The constitutional right to be heard is a basic aspect of the duty of government to follow a fair process of decisionmaking when it acts to deprive a person of his possessions. The purpose of this requirement is not only to ensure abstract fair play to the individual. Its purpose, more particularly, is to protect his use and possession of property from arbitrary encroachment—to minimize substantively unfair or mistaken deprivations of property, a danger that is especially great when the State seizes goods simply upon the application of and for the benefit of a private party. So viewed, the prohibition against the deprivation of property without due process of law reflects the high value, embedded in our constitutional and political history, that we place on a person's right to enjoy what is his, free of governmental interference. See *Lynch v. Household Finance Corp.*, 405 U.S. 538.

The requirement of notice and an opportunity to be heard raises no impenetrable barrier to the taking of a person's possessions. But the fair process of decisionmaking that it guarantees works, by itself, to protect against arbitrary deprivation of property. For when a person has an opportunity to speak up in his own defense, and when the State must listen to what he has to say, substantively unfair and simple mistaken deprivations of property interests can be prevented. It has long been recognized that 'fairness can rarely be obtained by secret, one-sided determination of facts decisive of rights. . . [And n]o better instrument has been devised for arriving at truth than to give a person in jeopardy of serious loss notice of the case against him and opportunity to meet it.' *Joint*

Anti-Facist Refugee Committee v. McGrath, 341 U.S. 124, 170-172 (Frankfurter, J., Concurring).

If the right to notice and a hearing is to serve its full purpose, then, it is clear that it must be granted at a time when the deprivation can still be prevented. At a later hearing, an individual's possessions can be returned to him if it was unfairly or mistakenly taken in the first place. Damages may even be awarded to him for the wrongful deprivation. But no later hearing and no damage award can undo the fact that the arbitrary taking that was subject to the right of procedural due process has already occurred. 'This Court has not . . . embraced the general proposition that a wrong may be done if it can be undone.' *Stanley v. Illinois*, 401 U.S. 936.

This is no new principle of constitutional law. The right to a prior hearing has long been recognized by this Court under the Fourteenth and Fifth Amendments. Although the Court has held that due process tolerates variances in the *form* of a hearing 'appropriate to the nature of the case,' *Mullane v. Central Hanover Tr. Co.*, 339 U.S. 306, 313, and 'depending upon the importance of the interests involved and the nature of the subsequent proceedings [if any],' *Boddie v. Connecticut*, 401 U.S. 371, 378, the Court has traditionally insisted that, whatever its form, opportunity for that hearing must be provided before the deprivation at issue takes effect . . . E.g. *Bell v. Burson*, 402 U.S. 535, 542; *Wisconsin v. Constantineau*, 400 U.S. 433, 437; *Goldberg v. Kelly*, 397 U.S. 254; *Armstrong v. Manzo*, 380 U.S. at 551; *Mullane v. Central Hanover Trust Co.*, supra at 313, App. *Coxton Nulls v. Administrator*, 312 U.S. 126, 152, 153; *U. S. v. Illi-*

nois Central R. Co., 261 U.S. 457, 463; *Londoner v. City & County of Denver*, 210 U.S. 373, 385-386. See *In Re Ruffalo*, 390 U.S. 544, 553-551 'That the hearing required by due process is subject to waiver and is not fixed in form and does not affect its root requirements that an individual be given an opportunity for a hearing before he is deprived of any significant property interest, except for extraordinary situations where some valid governmental interest is at stake that justifies postponing the hearing until after the event' *Boddie v. Connecticut*, supra at 378-379.

The Florida and Pennsylvania prejudgment replevin statutes fly in the face of this principle. To be sure, the requirements that a party seeking a writ must first post a bond, allege conclusorily that he is entitled to specific goods, and open himself to possible liability in damages if he is wrong, serve to deter wholly unfounded applications for a writ. But those requirements are hardly a substitute for a prior hearing, for they test no more than the strength of the applicant's own belief in his rights. Since his private gain is at stake, the danger is all too great that his confidence in his cause will be misplaced. Lawyers and judges are familiar with the phenomenon of a party mistakenly but firmly convinced that his view of the facts and law will prevail, and therefore quite willing to risk the costs of litigation. Because of the understandable, self-interested fallibility of litigants, a court does not decide a dispute until it has had an opportunity to hear both sides—and does not generally take even tentative action until it has itself examined the support for the plaintiff's posi-

> tion. The Florida and Pennsylvania statutes do not even require the official issuing a writ of replevin to do that much.
>
> The minimal deterrent effect of a bond requirement is, in a practical sense, no substitute for an informed evaluation by a neutral official. More specifically, as a matter of constitutional principle, it is no replacement for the right to a prior hearing that is the only truly effective safeguard against arbitrary deprivation of property. While the existence of these other, less effective, safeguards may be among the considerations that affect the form of hearing demanded by due process, they are far from enough by themselves to obviate the right to a prior hearing of some kind." *Fuentes v. Shevin,* 407 U.S. 67, at 80 to 84 (1972).

In the cited case, this Court was questioning the Constitutionality of two state statutes where no provision was made for a hearing. This Court ruled that to deny notice of a hearing and a hearing in civil matters, was unconstitutional. The case at the bar presents identically the same notion. The petitioner was never notified of a hearing to be had against him after in-personam jurisdiction was obtained over him. The circumstances of the petitioner, being recently released for the military service, residing out-of-state, having an attorney of record before the Court, and being some two years after service of summons, required special consideration for the elements of fair judicial process to be effectively had against him.

> " 'The fundamental requisite of due process of law is the opportunity to be heard.' *Grannis v. Ordean,* 234 U.S. 385, 394 (1914). The hearing must be 'at a meaningful time and in a meaningful manner.' *Arm-*

strong v. Manzo, 380 U.S. 545, 552 (1965). In the present context these principles require that a recipient have timely and adequate notice detailing the reasons for a proposed termination, and an effective opportunity to defend by confronting any adverse witnesses and by presenting his own arguments and evidence orally. These rights are important in cases such as those before us, where recipients have challenged proposed terminations as resting on incorrect or misleading factual premises or on misapplication of rules or policies to the facts of particular cases.

The opportunity to be heard must be tailored to the capacities and circumstances of those who are to be heard.

In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses. *E. G., ICC v. Louisville & N. R. Co.*, 227 U.S. 88, 94-95 (1913); *Willner v. Committee on Character & Fitness*, 373 U.S. 96, 103-104 (1963). What we said in *Greene v. McElroy*, 360 U.S. 474, 496-497 (1959), is particularly pertinent here:

> 'Certain principles have remained relatively immutable in our jurisprudence. One of these is that where governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the Government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue. While this is important in the case of documentary evidence, it is even more important where the evidence consists of the testimony of individuals whose memory might be faulty or who,

> in fact, might be perjurers or persons motivated by malice, vindictiveness, intolerance, prejudice, or jealousy. We have formalized these protections in the requirements of confrontation and cross-examination. They have ancient roots. They find expression in the Sixth Amendment. . . . This Court has been zealous to protect these rights from erosion. It has spoken out not only in criminal cases, . . . but also in all types of cases where administrative . . . actions were under scrutiny.'
>
> Welfare recipients must therefore be given an opportunity to confront and cross-examine the witnesses relied on by the department." *Goldberg, Commissioner of Social Services of the City of New York v. Kelly, et al.*, 397 U.S. 254 (1970) at page 267.

In failing to notify the petitioner after two years, with an attorney of record, the Court in New Jersey has prohibited the petitioner from having a fair opportunity to make a meaningful defense and be heard in its behalf. This Court addressed itself to the proposition of fair notice and hearing in *Wisconsin v. Constantineau.*

> ". . . or characterization given a person by 'posting,' though a mark of serious illness to some, is to others such a stigma or badge of disgrace that procedural due process requires notice and an opportunity to be heard. We agree with the District Court that the private interest is such that those requirements of procedural due process must be met.
>
> In the present case the Wisconsin Act does not contain any provision whatsoever for notice and hearing. There is no ambiguity in the state statute. There

> are no provisions which could fairly be taken to mean that notice and hearing might be given under some circumstances or under some construction but not under others. The Act on its face gives the chief of police the power to do what he did to the appellee. Hence, the naked question, uncomplicated by an unresolved state law, is whether that Act on its face is unconstitutional. As we said in *Zwickler v. Koota,* 389 U.S. 241, 251, abstention should not be ordered merely to await an attempt to vindicate the claim in a state court. Where there is no ambiguity in the state statute, the federal court should not abstain but proceed to decide the federal constitutional claim. Id., at 250-251. We would negate the history of the enlargement of the jurisdiction of the federal district courts, if we held the federal court should stay its hand and not decide the question before the state courts decided it." *Wisconsin v. Constantineau,* 400 U.S. 433, at page 436, 91 S. Ct. 507 (1971).

In the cited case the state statute made no provision for a hearing and gave no notice of any action to be taken against an individual, the circumstances of the case-at-bar are quite similar. Where notice of a hearing is not given to a defendant, even if provided for in local court rule or in the civil rules of that state, as to that defendant not notified, they are non-existent. A fortiori the proceedings in New Jersey as against petitioner were unconstitutional regardless of the in-personam jurisdiction had upon petitioner.

2. The Court Below Has Ignored Doctrines Which Have Denied Petitioner a Forum Which Has Been Determined to Be Unconstitutional by This Court.

The well-established doctrine of Full, Faith and Credit prevented petitioner from raising the defense of procedural misconduct from New Jersey here in Ohio. Petitioner again stresses the points raised in his brief filed before the 6th Circuit Court of Appeals.

Brinkerhoff-Faris v. Hill (*infra*) stands for the proposition, one state cannot formulate rules to prohibit a litigant from having his day in Court. Petitioner raises issues before the Ohio Courts which by case law they cannot hear. The instant case ripens into a *Brinkerhoff*-type violation at this point. Failure of due process, after jurisdiction is obtained over the person, is not a collateral attack and one state may not inquire beyond jurisdiction of a sister state's judgment.

> "However, while it is established that a Court in one State, when asked to give effect to judgment of a Court in another State, may constitutionally inquire into the foreign court's jurisdiction to render that judgment, the modern decisions of this court have carefully delineated the permissible scope of such an inquiry. From these decisions there emerges the general rule that a judgment is entitled to full faith and credit—even as to questions of jurisdiction—when the second court's inquiry discloses that those questions have been fully and fairly litigated and finally decided in the court which rendered the original judgment." *Durfee v. Duke*, 375 U.S. 106 at 111 (1963).

The Ohio courts affirmed the instant case on just those grounds. Petitioner had, at this point, no other forum that could hear his claim excepting the District Court. A

more modern discussion of the *Brinkerhoff Doctrine* is ***Boddie, et al. v. Connecticut, et al.***, 401 U.S. 371 at 377, March (1971).

> "Prior cases establish, first, that due process requires, at a minimum that absent a countervailing state interest of overriding significance, persons forced to settle their claims of right and duty through the judicial process must be given a meaningful opportunity to be heard. Early in our jurisprudence, this Court voiced the doctrine that 'wherever one is assailed in his person or his property, there he may defend.' *Windsor v. McVeigh*, 93 U.S. 274, 277 (1876). See *Baldwin v. Hale*, 1 Wall. 223 (1864); *Hovey v. Elliott*, 167 U.S. 409 (1897). The theme that 'due process of law signifies a right to be heard in one's defense,' *Hovey v. Elliott*, supra, at 417, has continually recurred in the years since *Baldwin, Windsor, and Hovey*. Although 'in any controversies have raged about the cryptic and abstract words of the Due Process Clause,' as Mr. Justice Jackson wrote for the Court in *Mullane v. Central Hanover Tr. Co.*, 339 U.S. 306 (1950), 'there can be no doubt that at a minimum they require that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case.' Id., at 313.
>
> Due process does not, of course, require that the defendant in every civil case actually have a hearing of the merits. A State, can, for example, enter a default judgment against a defendant who, after adequate notice fails to make a timely appearance, see *Windsor*, supra, at 278, or who, without justifiable excuse, violates a procedural rule requiring the pro-

duction of evidence necessary for orderly adjudication, *Hammond Packing Co. v. Arkansas*, 212 U.S. 322, 351 (1909). What the Constitution does require is 'an opportunity granted at a meaningful time and in a meaningful manner,' *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965) (emphasis added), 'for a hearing appropriate to the nature of the case,' *Mullane v. Central Hanover Tr. Co.*, supra, at 313. The formality and procedural requisites for the hearing can vary, depending upon the importance of the interests involved and the nature of the subsequent proceedings.

That the hearing required by due process is subject to waiver, and is not fixed in form does not affect its root requirement that an individual be given an opportunity for a hearing before he is deprived of any significant property interest, except for extraordinary situations where some valid governmental interest is at stake that justifies postponing the hearing until after the event. In short, 'within the limits of practicability,' *Mullane v. Central Hanover Tr. Co.*, supra, at 318, a State must afford all individuals a meaningful opportunity to be heard if it is to fulfill the promise of the Due Process Clause." *Boddie, et al. v. Connecticut, et al.*, 401 U.S. 371 at 377, March (1971).

The Sixth Circuit ignored petitioner's position. In light of the foregoing record, the Sixth Circuit erred in affirming the dismissal of petitioner's petition. Petitioner presented substantial evidence in his favor, yet was ignored. It is incumbent upon this Court to review the record petitioner presents and determine if the Sixth Circuit ruling is supported by the record and if not, then to set it aside.

> "A finding is clearly erroneous when although there is evidence to support it, the reviewing Court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *United States v. United States Gypsum,* 333 U.S. 364, 395 (1947), *Lewis v. City of Grand Rapids,* 357 F.2d 276, 289 (6th Cir. 1966).

It is important to note that petitioner performed all of his obligations under the law. He did not hide from the process server, nor did he refuse to defend. We stress this point strongly.

> "It is what Mr. Justice Brandeis called 'due process in the primary sense.' *Brinkerhoff-Faris Trust & Savings Co. v. Hill,* 281 U.S. 673, 681, 50 S. Ct. 451, 454, 74 L. Ed. 1107 (1930). And when Congress has designated an administrative agency as the initial forum for the adjudication of contested rights, only a clear demonstration that recourse to the agency would be futile, self-defeating or judicially wasteful will justify the abandonment of the exhaustion requirement. No such demonstration has been made here. The appellant deliberately refused to utilize the administrative apparatus available to rectify what he considered unjust. He will not now be heard to complain of the denial of due process from a system he chose to ignore." *U. S. v. Hayden,* 445 F.2d at 1376 (9th Cir. April 1971).

The District Court was concerned with exhaustion of state remedies (record page 5, line 20, to page 6, line 18). Petitioner cited a very recent per curiam decision exactly case-in-point (record page 3, line 14).

> "After a 'preliminary hearing on defendant's' motion to dismiss 'at which the Court' received evidence upon which to resolve the matter, the court dismissed the complaint on the ground that none of the claimants had exercised her right under Indiana Law to appeal from a county decision denying welfare assistance, Burns' Ind. Stat. Ann. Sections (52-1211)-1 (Supp. 1970), and therefore appellants had failed to exhaust administrative remedies." *Carter v. Stanton*, 92 S. Ct. 1232 at 1233 (1972).

The Court in this per curiam decision goes on further to discuss how jurisdiction in Federal Court is established where a claimant does not completely exhaust his state remedies.

> "Contrary to the State's view, our jurisdiction of this appeal under 28 U.S.C. Section 1253 is satisfactorily established. *Sullivan v. Alabama State Bar*, 394 U.S. 812, 89 S. Ct. 1486, 22 L. Ed. 2d 749, aff'g, 295 F.Supp. 1216 (M.D. Ala. 1969); *Whitney Stores, Inc. v. Summerford*, 393 U.S. 9, 89 S. Ct. 44, 21 L. Ed. 2d 9, aff'g, 280 F.Supp. 406 (S.C. 1968). Also the District Court plainly had jurisdiction of this case pursuant to 42 U.S.C. Section 1983 and 28 U.S.C. Section 1343. *Damico v. California*, 389 U.S. 416, 88 S. Ct. 526, 19 L. Ed. 2d 647 (1967). *Damico*, an undistinguishable case, likewise establishes that exhaustion is not required in circumstances such as those presented here." *Carter v. Stanton*, 92 S. Ct. 1232 at 1234, 1972.

The cited case clearly shows that for the type of violation which petitioner is complaining, exhaustion of State appellate procedure is not a prerequisite.

CONCLUSION

Petitioner has been denied a forum to properly defend himself by the misconduct of the New Jersey Court. Procedural rules have prohibited the petitioner from adequately defending himself in Ohio. The Sixth Circuit has ignored the lack of Due Process as applied to the petitioner and has endorsed a procedure that is in direct conflict with well-established guide lines set up by this Court. For all of the reasons previously stated we request that this Petition for Certiorari should be granted and upon review the order of the Sixth Circuit should be vacated and this case returned to the District Court for a hearing on the merits in order to promote continuity and uniformity with the cited cases and to reaffirm that Due Process is required at all stages of proceedings.

Respectfully submitted,

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APPENDIX

Judgment of the Court of Appeals

(Filed April 9, 1973)

No. 72-2180

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

SOUTH RIVER RESCUE SQUAD,
Plaintiff-Appellee

vs.

KENNETH HEGYES,
Defendant-Appellant

ORDER

Before WEICK, MILLER and KENT, Circuit Judges.

The District Court had no jurisdiction over the action of the appellant which he attempted to remove to the federal court after a final judgment had been entered against him in the state court.

The judgment of the District Court dismissing the action is therefore affirmed.

ENTERED BY ORDER OF THE COURT.

/s/ JAMES A. HIGGINS
Clerk

Order of the Court of Appeals Denying Petition for Rehearing

(Filed May 22, 1973)

No. 72-2180

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

SOUTH RIVER RESCUE SQUAD,
Plaintiff-Appellee

vs.

KENNETH HEGYES,
Defendant-Appellant

ORDER

Before WEICK, MILLER and KENT, Circuit Judges.

The claims made in the petition for rehearing require discussion of the facts, all of which are matters of record.

Plaintiff recovered a default judgment against the defendant on November 26, 1969, in the amount of $1,100, in the Middlesex County District Court in the state of New Jersey. Defendant had been duly served with process therein and entered his appearance, invoking a stay under the Soldiers and Sailors Relief Act of 1940 § 200, as he was in military service at that time. He was, however, discharged from the service in March, 1969, which was more than seven months prior to the entry of the default judgment.

Plaintiff then filed suit against the defendant on the New Jersey judgment in the Shaker Heights Ohio Municipal Court. In that action defendant was served with

process and he endeavored to litigate the validity of the New Jersey judgment. The Shaker Heights Municipal Court rejected defendant's defense and on September 3, 1971 it entered judgment against him in the amount of $1,114.40. The judgment was affirmed by the Court of Appeals of Cuyahoga County, Ohio, on March 30, 1972.

Defendant then filed a petition against the plaintiff in the United States District Court, entitled "Petition to Remove Judgment and Judgment Lien" and an application for preliminary injunction. The District Court dismissed the petition as frivolous.

The New Jersey Court had in personam jurisdiction and its judgment was in full force and effect. The Municipal Court of Shaker Heights was required to accord full faith and credit to the New Jersey judgment, which it did. The full faith and credit clause of the Constitution precludes inquiry into the merits of the New Jersey judgment.

The petition for rehearing is denied.

ENTERED BY ORDER OF THE COURT.

/s/ JAMES A. HIGGINS
Clerk

Order of the District Court

(Filed August 21, 1972)

Civil No. 72-828

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

SOUTH RIVER RESCUE SQUAD,
Plaintiff,

VS.

KENNETH HEGYES,
Defendant.

ORDER

BATTISTI, C.J.:

This cause of action having come on for hearing on defendant's request for preliminary injunction,

IT IS ORDERED that the application of the defendant for preliminary injunction is hereby denied, and defendant's amended petition is dismissed as frivolous.

/s/ FRANK J. BATTISTI
Chief Judge